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**Report of the District Attorney of Ulster County
Concerning the Investigation of the Ulster County
Law Enforcement Center**

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On September 19, 2007 a Special Ulster County Grand Jury was impaneled to investigate the Ulster County Law Enforcement Center ("UCLEC") project, at the behest of a referral from the Ulster County Legislature. Last week, the Special Grand Jury completed its work. Over six months, the Special Grand Jury heard testimony from nearly 40 witnesses comprising more than 4,500 pages of testimony, and reviewed thousands of pages of documents dealing with this project. The Special Grand Jury has returned one criminal charge and has prepared a report proposing legislative or administrative reforms in the public interest. In supervising this investigation, our Office has been assisted by the Ulster County Sheriff's Office and the New York State Commission on Investigations.

This Report is intended to supplement the work of the Special Grand Jury by addressing matters not directly reviewed in the Grand Jury's findings. This Report does not rely on information obtained by the Grand Jury and subject to Grand Jury secrecy. The conclusions reflected in this Report are based solely on records maintained by the County and information provided by individuals – generally current and former County employees – who cooperated with this investigation beyond simple testimony in the Grand Jury.

For as much as a decade before serious planning for the UCLEC began, Ulster County was struggling with an over-crowding problem at the old Ulster County jail on Golden Hill. The facility was filled to capacity in the 1990s, as more and more space in and around the jail was converted to residential use. The jail was operating under variances from the State, which expected the County to take long-term steps to address over-crowding. The over-crowding placed strains on the physical plant of the facility which, in addition to aging, was also built according to a corrections philosophy – indirect

supervision – that was being phased out by the mid- to late-1990s. With the population exceeding legal capacity, the County was absorbing increasing annual costs for boarding out its prisoners at other institutions.

During the mid-1990s, the County received a series of expert analyses of the jail situation, but continued to weigh its options and absorb board-out costs. Finally, in 1998, the County received the report of another expert from the National Institute of Corrections (“NIC”), repeating many of the lessons conveyed in earlier reports. Two conclusions stood out from the expert’s recommendations: that the County should build a new facility and that before launching into that process, the County should conduct a careful evaluation of its circumstances and needs, including the possibility of controlling inmate population growth through greater use of alternatives to incarceration. Ultimately, some planning and review was attempted, but in a more rushed and less thorough fashion than would have been best, as the County hurried to begin the construction process.

In 1998, County leaders – both elected and appointed – attended a training program sponsored by the NIC in Colorado, called the PONI program or “Planning of New Institutions.” Key county leaders returned from this seminar focused on the importance of choosing an appropriate site for new construction in order to, among other things, minimize community opposition.

In this time-frame, the County also began working with an assumption regarding the size of any new jail, specifically that it be built to house at least 400 inmates.¹

It is clear that, originally, the County leadership expected to build the new facility on Golden Hill in the vicinity of the existing jail on land already owned by the County. An engineering study of Golden Hill conducted in 1998 by the firm Brinnier & Larios, however, suggested that the topography of Golden Hill would make new construction there difficult and expensive, and would require building high-rise housing units, which are less desirable from a population control perspective.

The Brinnier & Larios study pointed, for the first time, to the possibility of acquiring and utilizing nearby property on Albert Street in connection with the UCLEC project. The study noted that if the County persisted in building on Golden Hill, that the Albert Street property would need to be acquired to manage storm-water run-off and suggested that it might present a superior location to build a new facility.

Although public questions have been raised regarding the identification and selection of this tract of land, we have found no evidence to suggest that any public official or private person improperly promoted this land for jail use. The Brinnier & Larios study was received from an authoritative and unbiased source.

¹ In this Report, I express no judgment on the chosen bed capacity of the UCLEC. Although the jail population has not grown at the rate predicted when the UCLEC was designed, the decision to build for a particular number of inmates arose out of a number of different judgments – not only population growth but the possibility of making money by boarding-in inmates from other institutions – that I am not in a position to second-guess. The Grand Jury found no evidence of criminality in the sizing of the facility.

Although County officials, primarily through the Planning Department, conducted a *bona fide* review of several other pieces of land, the County moved quickly to acquire the Albert Street property. The principal reasons for preferring Albert Street were the availability of sewer and water lines and its proximity to the County Courthouse in Kingston.

By the fall of 1998, the County had purchased a six-month option to buy the Albert Street property, based on a final purchase price of \$350,000. It appears that the price was within a reasonable range of prices for similarly sized commercial plots, as reflected in the independent appraisal the County ultimately, if belatedly, obtained.

Despite having discussed the importance of a careful needs assessment to evaluate exactly how much jail the County needed to build, the rapid purchase of an option on the Albert Street property appears to have put the project into over-drive. The County moved quickly to conduct the necessary environmental studies required under the State Environmental Quality Review Act and paired that process with the conduct of a broad “needs assessment.”

By this point, early choices on the UCLEC project were characterized by *ad hoc* decision-making by an ever-changing cast of committees and personnel. In some cases, County decision-makers made hasty or ill-considered decisions; in others, they made curious and costly choices, despite spending significant time and effort to ensure a good outcome.

The first significant consequence of this approach was the well-documented violation of County procurement policy in the hiring of Atlanta-based Rosser International to do the needs assessment in early 1999.² Discussions recorded in minutes, dating back at least a year before, show that County decision makers were well aware of the process of using “Requests for Proposals” (“RFPs”) as a means of hiring professional services providers. Nevertheless, when the time came to hire a consultant to perform a crucial study regarding the necessary size of the new jail and its suitability to the land under consideration, County officials disregarded the procurement policy and rushed to use an unwise, informal approach, resulting in the selection of a preferred local architect, Crandell Associates, (who subcontracted to Rosser) over a nationally-recognized expert.

The needs assessment was conducted in two phases: Track 1 and Track 2. The substance of those studies need not be reviewed at length here, except to note a crucial development in the course of this work: the building grew significantly. One of the key parts of the Track 1 study was to determine the maximum size of the building in order to determine whether it would fit on the Albert Street property and what the environmental impact of that construction would be. The size was to be projected conservatively – that is, it should have come up with the largest possible size that the County would consider building. In fact, the building projected in the Track 1 study stood at 189,475 gross square feet; by the time the Track 2 report was completed, the building had grown to

² This course of events underlies the criminal charge returned by the Grand Jury.

226,514 square feet, an increase of nearly 20%. At the time construction began more than three years later, the design called for a building of 277,000 square feet.

Subsequent to the needs assessment, the same team of Crandell and Rosser won the contract to design the UCLEC itself. In making this selection, the County apparently made a conscious decision to minimize cost as a factor in their choice. As a result, as set forth in the fee proposals (which had not yet been located at the time the Special Committee issued its report), the County's two finalists – the firms the selection committee considered most qualified – were the most and least expensive. The County chose the most expensive, increasing the cost of the project from the outset by approximately \$1 million. The County's choice turned out especially poorly in light of the fact that design flaws appear to be at the root of many of the later construction cost over-runs.

Once the architect and a construction manager ("CM") were in place, the formal design process began, with input from members of the Sheriff's Office Jail Transition Team who conveyed the needs and preferences of that department. A variety of problems, of varying degrees of seriousness, arose during the design process. Ultimately, the design process took longer than anticipated. Meanwhile, the project lost a significant amount of time once the County concluded that it would have to acquire a railroad right-of-way that lay adjacent to the property, in order to bury power-lines that crossed the main parcel and to create a more convenient point of entry for the UCLEC. Because the owner and the County were unable to agree on a price for the land, the County resorted to eminent domain proceedings which took many months to complete.

By the spring of 2002, County leaders exerted pressure on the design team and CM to get the project out to bid so work could begin. The principal reason for the County's pressure was to enable work to begin during the fall 2002 construction season, before winter set in. The significant fixes of the design that were later required suggest that an additional investment of time at the front end would have been preferable.

Once bids were received and opened, in the summer of 2002, the CM's representative made a significant change to the project: based on a review of the design documents and the contractor bids, the CM proposed that the project could be completed in just 18 months, rather than the 24 months that the County had previously assumed. Contracts with the 12 prime contractors all reflected the 18 month plan and all agreed that, though perhaps ambitious, that deadline was achievable. Based on that change, work on the UCLEC was to be substantially complete in April 2004. Needless to say, this affected not only the public's perception of the project's progress through the years but also the subsequent costly delay claims filed by most of the contractors.

Soon after work began at the site, the construction process encountered significant and consequential problems. Participants disagree over where to place blame and to what degree. The Grand Jury found no evidence of criminality on the part of any contractors or County employees or agents during the construction phase of this project. Ultimately, the UCLEC project has run more than \$20 million over budget and the facility was more than three years late opening.

The first and foremost question of public interest is, of course, where did all the money go? The answer, in its simplest terms, is that the extra money went to the companies that built the jail and to the lawyers and consultants who were hired by the County to assist in sorting out claims and fighting lawsuits.

Once the new facility was designed and contracts were awarded to the lowest bidders, the UCLEC project was launched with a budget of approximately \$71.8 million. This total contained two parts. First, approximately \$60.5 million to actually build the jail and second, approximately \$11.3 million of non-construction costs, of which the most significant were the architect's contract of \$3.9 million and the construction manager's contract of just under \$2 million. The \$71.8 million total included contingencies. For example, the construction contracts totaled just over \$57 million, however, the County budgeted for up to \$3.4 million of potential additional costs.

During the course of construction, changes to the design led to changes in the construction contracts. All told, by January of 2006, those changes added up to approximately \$63.25 million. In other words, by that point in time, the cost of building the jail exceeded the budget by a little less than \$3 million. While the fact that the County exceeded its contingency funding by an additional 5% or so is no credit to the management of the project, this number helps put in perspective the nature of the cost overruns.

How, then, did the cost of the project grow by more than \$20 million and counting, when only a fraction of that sum went to direct construction cost increases? Changes to the design and disputes with contractors early in the process led to extensive delays in the construction process. In fact, less than seven months into the project, one of the prime contractors was already claiming to have suffered losses because of the delays. Ultimately, most of the contractors brought claims against the County claiming to have been hurt financially or to have incurred extra costs of doing business on this project as a result of these delays. Because of these claims, the County ended up paying millions of dollars extra to several of those contractors in settlement of their claims.

Meanwhile, in order to evaluate and, where necessary, fight those contractor claims, the County spent millions of dollars on attorneys and consultants. For example, consultant Hill International has received nearly \$2 million in fees to analyze contractor claims. At the same time, the contract for the CM increased by more than \$1 million as the length of the project grew.

The decisions to pay certain claims, while continuing in litigation against the CM and the architect, Crandell Associates, have been made, as they should, by the politically accountable branches of the County government. This Office's investigation did not review the wisdom of these decisions, about which the County has already received well-paid advice.

In sum, there is no one villain at the root of the County's problems on the UCLEC project. The prosecution of one person for a crime committed at one stage, should not be misunderstood for an assignment of blame for all that went wrong here. Our investigation confirms what others have said before: the County was disserved by many

people and entities during the course of this project. By and large, the failures were not based on a desire to harm the County or to gain personally; indeed, many of those who made what in hindsight can only be viewed as bad decisions were not acting with any malice or criminal mindset. In the end, the UCLEC is a facility which will hopefully serve the County well for decades. Unfortunately, the citizens of Ulster County have paid far too much while receiving far too little from the stewards of the public trust.